

IN THE UNITED STATES DISTRICT COURT
OF WESTERN PENNSYLVANIA

ALL-CLAD METALCRAFTERS,
LLC, COOKWARE
MARKETING AND SALES
PRACTICES LITIGATION

CIVIL DIVISION

MDL No. 2988

Case No. 21-mc-491

Transcript of VIDEO STATUS CONFERENCE held on JUNE 23, 2021
United States District Court, Pittsburgh, Pennsylvania
BEFORE: HONORABLE J. NICHOLAS RANJAN, DISTRICT JUDGE

APPEARANCES:

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1 P R O C E E D I N G S

2 (June 23, 2021, 2:05 p.m. In open court via
3 videoconferencing.)

4 THE DEPUTY CLERK: Good afternoon.

5 The United States District Court for the
6 Western District of Pennsylvania is now in session. The
7 Honorable J. Nicholas Ranjan presiding.

8 The matter now before the Court is MDL
9 No. 29-88, All-Clad Metal Crafters, LLC, Cookware
10 Marketing and Sales Practice Litigation at Case
11 No. 21-mc-491.

12 THE COURT: Good afternoon, everyone.

13 My understanding is that everyone has already
14 entered their appearances for the record. My
15 understanding, also, is that for the plaintiffs, the
16 primary speaker is Ms. Segui. Am I pronouncing your
17 name correctly?

18 MS. SEGUI: Perfectly.

19 THE COURT: All right. Great. Thank you.
20 For the defendant, Mr. Dalton?

21 MR. DALTON: Correct, Judge.

22 THE COURT: Good afternoon to all of you.

23 That doesn't preclude anyone else from chiming
24 in and speaking at any time but I think it is helpful
25 for me to know who might be doing most of the speaking

1 here today.

2 So I appreciate everyone taking the time for
3 this conference. I issued my initial order which set
4 forth a bit of an agenda for this conference.

5 I received the status report, which I really
6 appreciated receiving. It was very helpful and I think
7 answered some of my questions. Primarily I'm going to
8 go off my initial order and status report and tick down
9 some of the initials and open the floor. We can
10 certainly discuss anything else that anyone believes is
11 important to raise at this time.

12 The first thing I wanted to talk about was the
13 case status. When I received the joint status report,
14 it had indicated no additional cases had been filed. I
15 know we have four class actions that were filed and
16 since that status report was filed a little bit ago, I
17 wanted to confirm that was still the case, that no
18 additional cases had been filed or were likely to be
19 filed or on the way.

20 Mr. Dalton, I presume you might be in the best
21 position to answer that in the first instance. Anything
22 additional filed against your client?

23 MR. DALTON: No, nothing new to our knowledge,
24 Judge.

25 THE COURT: Okay. Ms. Segui, I know your firm

1 has filed all of these. I assume you don't have any
2 plans to file additional cases at this point in time; is
3 that right?

4 MS. SEGUI: We do have additional clients,
5 Your Honor, but at this time we don't have any plans to
6 file any additional cases now that it has been MDL'd.

7 THE COURT: All right. Thank you.

8 The next item I wanted to talk about was
9 discovery but not sort of getting into full-blown
10 discovery. I'm sort of curious as to what, if any,
11 discovery had been done, whether formally or informally,
12 before the transfer and since the transfer and the
13 creation of the MDL. I stayed all discovery but I did
14 mention that the parties could if they wanted to engage
15 in any kind of informal type of discovery. So why don't
16 we go there.

17 Ms. Segui, maybe you can start in the first
18 instance. Any discovery that has been taken in this
19 case?

20 MS. SEGUI: Yes, Your Honor. There has been
21 both formal and informal discovery. There was informal
22 discovery conducted leading up to obviously under our
23 Federal Rules of Evidence 408, conducted leading up to
24 the mediation we had.

25 Then we, plaintiffs, had served formal

1 discovery requests on the defendants and their responses
2 I think were either due or coming due at the time the
3 MDL papers were filed and that had been stayed in the
4 various jurisdictions.

5 THE COURT: Okay. I take it no depositions or
6 anything?

7 MS. SEGUI: No, Your Honor.

8 THE COURT: In terms of 408 discovery, I
9 assume voluntary exchange of information to get
10 everybody on the same page for mediation?

11 MS. SEGUI: That's correct.

12 THE COURT: Mr. Dalton, anything to add to
13 that?

14 MR. DALTON: No. My colleague has got it
15 correct, fully correct. We are in agreement there.

16 THE COURT: All right. Thanks.

17 I did see from the joint status report that
18 all clients had been advised to preserve evidence.
19 Sometimes in these MDLs, as you may know, there is a
20 request or an order implemented with respect to
21 preservation of evidence. Does anyone believe that is
22 necessary in this case? I know this is a case that has
23 been sent to the MDL but you are sort of dealing with
24 kind of a more discrete group of named plaintiffs and
25 primarily one defendant.

1 I didn't believe there was a need to issue any
2 kind of separate preservation order. I would be glad to
3 talk about that if there is a desire by any side.

4 Ms. Segui, for the plaintiffs, do you believe
5 there is a need for any specific order?

6 MS. SEGUI: None that I can think of right
7 now, no.

8 THE COURT: Mr. Dalton?

9 MR. DALTON: No. We impressed upon our client
10 the preservation. We did that back a year ago when this
11 case came in.

12 THE COURT: Sounds good. Well, I'm not going
13 to issue an order then. Obviously the Federal Rules
14 control. I think everyone has taken appropriate steps
15 to make sure the information, the discoverable
16 information is preserved.

17 Also on the topic of discovery, I did see from
18 the joint status report there was a confidentiality
19 agreement entered into one of the other cases that you
20 all were in the process of maybe converting to a
21 protective order here.

22 What is the status of that? I don't know
23 whose ball the court is in.

24 MS. SEGUI: Yes, I think that was in my court
25 to format that. We were working on it. My paralegal

1 had actually formatted and sent it back. I caught some
2 references to California that we need to correct, also.
3 We really should have that over this week.

4 THE COURT: Do you think both sides will be in
5 a position to review and confirm and file a joint motion
6 for protective order say one week from today?

7 MR. DALTON: I should think so. This was an
8 order that we already entered in the Northern District
9 of California. My recollection, Judge, it's pretty
10 similar to what we do in the Third Circuit.

11 MS. SEGUI: Yes, it's pretty straightforward
12 stuff.

13 THE COURT: Okay. The last thing on this
14 topic, I saw there was an ESI order that was finished or
15 close to being completed. Do you have an update on
16 that?

17 MS. SEGUI: Yes. So the only issue left on
18 the ESI order, and Chris can correct me, was we had a
19 dispute over what the discovery period would be.

20 I think we can try to work through that and
21 come to an agreement. If not, maybe that is something
22 that Special Master Katz can help us get over the finish
23 line.

24 THE COURT: Okay. Any views on that,
25 Mr. Dalton?

1 MR. DALTON: Ms. Segui is right. We had one
2 outstanding issue that we'll talk amongst ourselves and
3 try to pin that down, try to work it out before we get
4 to the special master.

5 THE COURT: One thing I wanted to talk about
6 at some point today is for all of you to get in front of
7 the special master one way or other regardless of
8 depending on where we are and what the schedule is like.
9 It might make sense to do that sooner rather than later
10 and that can be just one item. Hopefully, there is
11 agreement but if there is not, if you can resolve it
12 informally with her guidance. I thought it might be
13 helpful regardless of that issue to talk discovery and
14 get her up to speed a little bit as well. We can maybe
15 table that. We can talk about that a little bit later
16 here.

17 The next thing I wanted to address, though, is
18 mediation. It looked like you had a pretty robust
19 mediation session. Tell me about that. What mediator
20 did you use? When was it?

21 Obviously, I don't need to know the numbers.
22 I'm somewhat curious if you all broke up at a point
23 where you thought whether it was a productive session
24 such that there might be an opportunity for follow-up or
25 if it was a situation where one party was playing in a

1 major league ballpark and the other was in a double AA
2 ballpark so to speak.

3 MR. DALTON: No sports analogies, Judge. We
4 are not supposed to do that.

5 THE COURT: I'm not a baseball fan.

6 MR. DALTON: Only in October.

7 MS. SEGUI: Your Honor, we used a mediator in
8 the Northern District of California. He was a JAMS
9 mediator, retired state court judge, but he did not have
10 a whole lot of product experience. So from plaintiffs'
11 perspective it just didn't seem like a good fit. I
12 think my colleagues had talked with Chris and his
13 colleagues prior to the status conference so we can get
14 on the same page about this item, this agenda item you
15 had in your CMO about potentially mediating.

16 I think, at least from plaintiffs'
17 perspective, we would be more than willing to try again.
18 I think we would probably need a reset so we can start
19 over with a clean slate.

20 I don't think we ever really had an agreement
21 on anything that was concrete or substantial. We
22 certainly tried but I do think we would benefit from
23 maybe a different mediator who is a little bit better
24 fit for a product case like this. That's plaintiffs'
25 perspective.

1 I know they are going to say we were playing
2 in a different ballpark.

3 THE COURT: More zeros.

4 Mr. Dalton, what was your perspective?

5 MR. DALTON: You're right, Judge. It's the
6 different number of zeros after the comma but that's
7 okay.

8 We had two days with Judge Kramer who was
9 formerly the complex commercial judge in San Francisco
10 County for some time.

11 We did spend a lot of time with him. We went
12 back and forth with some various concepts but ultimately
13 weren't able to reach a compromise, obviously because we
14 are still here.

15 I personally am never adverse to try and see
16 if there is some way to work things out because the
17 worse thing you want to do is put your faith in the
18 hands of eight good and true citizens. I think we
19 remain open to the idea.

20 I have to circle back with our folks at
21 All-Clad but I always want to keep that open. I think
22 perhaps offline we can talk amongst ourselves about
23 possible thoughts on a different mediator. I'm wide
24 open.

25 THE COURT: Okay. That sounds good. I

1 appreciate the update on that.

2 Can I ask you this. I know we'll talk about
3 this at another point probably here coming up but it
4 seemed like in the California case, there is a pending
5 motion to dismiss and motion to strike. Sounds like
6 there might be some other ones coming down the pike in
7 terms of the other cases.

8 Is that an impediment I guess to sitting down
9 and talking settlement at this point in time? I know
10 sometimes I like pending motions as sort of an
11 opportunity to maybe talk. I know sometimes that can be
12 an impediment if we're talking about scheduling, and
13 they're filing motions to dismiss.

14 The question is how important is that for me
15 to sort of resolve before the parties can meaningfully
16 have additional settlement discussions? I'll put that
17 to you, Mr. Dalton. Maybe you don't have the answer
18 right now but it's something that sort of occurred to
19 me.

20 MR. DALTON: No. I hear that, Judge. I have
21 been on both sides with my client. Some will not talk
22 about mediation until you got a motion to dismiss
23 decided. Some will.

24 I think the fact that we did go into mediation
25 last fall without that motion pending, I think this

1 client, if there is a reasonable opportunity to try to
2 see if we can get it resolved, we'll probably want to
3 get the motions on file obviously but may not
4 necessarily need a decision in order to get in there.

5 I need to think about it a little bit more.
6 Again, I'm amenable to try to see if we can get
7 something done.

8 THE COURT: Okay. I appreciate that.

9 Let's talk about the lead counsel application.
10 I received the motion for appointment of lead counsel.
11 Everything looked to be in order.

12 Ms. Segui, I don't know if there is anything
13 you want to add or elaborate on.

14 MS. SEGUI: The only thing I would add or
15 update you on since the filing of this is that the
16 merger has been completed, so all three of us applying
17 are officially with the same firm now. We put that in
18 the paperwork to give you a heads-up that was coming
19 down the line.

20 No, unless you have specific questions for us.

21 THE COURT: I guess one question. It's
22 Milberg. Is that like a legacy spinoff from the Milberg
23 Weiss firm?

24 MS. SEGUI: Yes. Grossman and Phillips had
25 actually acquired Milberg in 2018 and so attached their

1 names to it. So it was Milberg, Phillips, Grossman and
2 then three firms merged. So it's now Milberg, Coleman,
3 Bryson, Phillips, Grossman, which I hope to never have
4 to say again so it's just still Milberg, so yes, it is
5 that same legacy firm, that's right.

6 THE COURT: Okay. The only question I had for
7 you and for your team I guess would be -- maybe it's a
8 couple questions. Looking to the docket, it seems like
9 it was your firm or combination of firms and associates
10 that were really in all these cases, so there is not
11 really a competing sort of lead counsel here; is that
12 correct?

13 MS. SEGUI: Yes, absolutely.

14 THE COURT: In terms of how you envision -- I
15 don't think you need to get too much into the weeds but
16 how you envision your team with Ms. Geer and Ms. Soffin
17 and yourself, kind of walk me through so I have some
18 comfort as to how that division of labor, I guess, how
19 you are envisioning that just so I kind of know what the
20 respective roles are.

21 MS. SEGUI: Sure. I think you probably saw in
22 the leadership application that the three of us are also
23 separately co-leading other MDLs. We thought it was
24 important to have the three of us, as you indicated,
25 have been litigating this from day one anyway. The

1 three of us have very separate but also complimentary
2 skill sets.

3 I had taken the expert portion from the
4 beginning and run with it. Ms. Geer can talk about
5 organization and she has a judicial background as an
6 appellant court judge. She has a great understanding on
7 how to plot out a case from the beginning and take it
8 all the way to the end because she has seen the end
9 results. She sees how that planning goes and they can
10 each speak to their own skill set.

11 Then Ms. Soffin has a great deal of experience
12 with product cases and experts and in particular damage
13 models.

14 We all have similar skill sets but those are
15 sort of distinguishable for us in a sense, and we do
16 work very well together. It's a collaborative effort
17 but we also would staff the case with junior associates
18 and are very aware of not running up our lodestar. That
19 is something we have to be very cognizant about in our
20 other MDLs, timekeeping and things like that so we're
21 not just duplicating efforts to duplicate efforts.

22 We have a very solid strategy about how we
23 want to get this case back on track. We all have MDL
24 experience.

25 Ms. Soffin can talk about her leadership

1 structure and her Devakrueel (phonetic) MDL, which is
2 similar to what we are proposing here where here is just
3 four leads in that and there is no steering committee
4 because the case is similarly sized.

5 It would seem kind of silly almost to have a
6 steering committee in this case when it's the size and,
7 as you indicated, it's the same firm that has been
8 leading it. That would just be unnecessarily inflating
9 our time and the people who are in a leadership role.

10 I do think it's important to have three people
11 versus two or one so you have a tie breaker in a
12 deciding vote and that is something that has been
13 problematic in some other MDLs where you have four
14 co-leads and you have two people pitted against two
15 people and who is the tie breaker in that scenario, but
16 I also think it's more important than just to have one
17 person because we need to be able to cover for each
18 other and come in where someone might not be available
19 because of their schedule or otherwise.

20 I will just give a personal example, not to
21 bring the mood down, but the personal emergency that we
22 had that we rescheduled the status conference for was
23 mine. My dad had passed away the day before we were
24 scheduled to have this and having co-leads in other
25 cases including Ms. Soffin and Ms. Geer in this case and

1 being able to come together and cover things and put
2 things in place that even though I wanted to be here for
3 the status conference, they were still doing things
4 behind the scenes to cover for me.

5 So the proposed leadership structure ensures
6 there is coverage at the highest level but also ensures
7 we have all the complimentary skill sets for one
8 another.

9 We do have a set goal and strategy moving
10 forward where we can divide and conquer but are also
11 just not unnecessarily duplicative.

12 I would toss it to Ms. Geer and Ms. Soffin if
13 they want to add anything else.

14 THE COURT: I appreciate that explanation. I
15 am sorry to hear about your father as well.

16 MS. SEGUI: Thank you. I did want to note I
17 am very appreciative to the Court and opposing counsel
18 for helping me move the status conference because I
19 didn't want to miss it.

20 THE COURT: Absolutely.

21 Ms. Soffin, anything to add? That was going
22 to actually be one of my questions. I know in a lot of
23 MDLs there is a steering committee. I didn't see the
24 need -- I'm not sure who would be on the committee --
25 the need here. We can all be on the committee in this

1 case but it seemed like if this exploded somehow into
2 something bigger, we can always revisit it at that point
3 in time. I don't know if you had anything to add onto
4 that, Ms. Soffin.

5 MS. SOFFIN: No, Your Honor. Ms. Segui
6 covered everything. I have had larger leadership slates
7 which have not been as productive. I think the
8 leadership that we have proposed with Ms. Geer and
9 Ms. Segui and myself is exactly what this case needs.
10 As Ms. Segui said, we compliment each other. We all
11 practice on a high level. This requires a lot of
12 collaboration on that high level and we, as Ms. Segui
13 said have plenty of junior associates that can help us
14 with things that don't require such a high level skill
15 set. We believe this would be adequately staffed with
16 the three of us.

17 THE COURT: Ms. Geer, I don't know if you
18 would like to add anything.

19 MS. GEER: Your Honor, I think they certainly
20 covered it. I think as both Ms. Segui and Ms. Soffin
21 have said, our strengths vary and compliment each other.

22 My background is such that I have a better
23 sense than most practitioners of what is maybe most
24 helpful to a judge with respect to briefing and argument
25 and presenting the issues, and I also as a result of my

1 background have a great deal of experience in managing
2 matters with a very lean staff.

3 So I think that lends itself to being able to
4 ensure that we represent the class as effectively as
5 possible but also that we're not, as Ms. Segui said, we
6 are not focusing on running up the lodestar but
7 presenting the case and the issues well with the least
8 amount of duplication of effort.

9 We also wanted to make sure this structure
10 does not have the traditional liaison counsel but we
11 will ensure that role is fulfilled. Because of our
12 experience litigating nationwide, we are accustomed to
13 ensuring that we are in compliance with the local rules
14 and judge's preferences and we'll make sure to do that
15 in this case as well.

16 THE COURT: All right. Thank you.

17 Just the final question I had was and you
18 might have covered it, is there one particular person
19 that would be on point for things like settlement and
20 mediation and that sort of thing?

21 MS. SEGUI: Honestly, I think all three of us.
22 We were in attendance at mediation and we definitely
23 bring different aspects to the table with regard to
24 settlement, also, just from different experience level.

25 I'm not sure we need necessarily a point

1 person because I think we would all want to be pretty
2 heavily involved. If you needed a liaison to take the
3 lead, though, I'm happy to fill that role.

4 THE COURT: Okay. I didn't find there was a
5 need for a liaison. In some MDLs, there is a liaison on
6 both sides.

7 I know, Mr. Dalton, your firm obviously has a
8 Pittsburgh office here and what I might consider doing
9 or suggesting maybe to the group is to the extent that
10 there is a need for some type of administrative liaison
11 role, maybe it's somebody at Buchanan locally that can
12 sort of coordinate in more administrative matters on
13 behalf of all sides.

14 I don't know, Mr. Dalton, if you have somebody
15 that is willing to do that or already on the docket?

16 MR. DALTON: Administratively handling things?

17 THE COURT: Yes.

18 MR. DALTON: I'm looking at the square below
19 me. My colleague Bridget Daley is in our Pittsburgh
20 office. I don't know if she would be. She is our boots
21 on the ground.

22 THE COURT: Okay. Ms. Daley, I won't do a
23 formal appointment of liaison counsel but maybe less
24 formally to the extent there is a need it becomes
25 something where there is a need to engage in some more

1 administrative oversight for whether it's scheduling or
2 court proceedings or what have you, if you can put that
3 on your to-do list to sort of shepherd that, I would
4 appreciate it.

5 MR. DALTON: I will apologize for throwing
6 Bridget under the proverbial bus.

7 THE COURT: Sounds good. I will grant
8 that -- well, I should ask, Mr. Dalton, I presume the
9 defendant has no objection to the motion?

10 MR. DALTON: No. We have been working well
11 for a year now, so no objection.

12 THE COURT: Thank you. I'll grant that motion
13 and the follow-up order to this and appoint the proposed
14 lead team as has been proposed.

15 Let's talk about the motions to dismiss. I
16 know from the joint status report, as I mentioned, it
17 looked like there were some additional motions that were
18 going to be filed or even in the original Judeo
19 (phonetic) case may be refiled.

20 Mr. Dalton, do you envision filing motions to
21 dismiss in all those cases?

22 MR. DALTON: We do have a motion pending in
23 the Massachusetts case that was transferred. I believe
24 that is fully briefed. We have planned to file a motion
25 to dismiss in the Northern District case. I don't

1 believe we got that on file yet. We have the two other
2 cases in which we hadn't responded yet, the Georgia and
3 Florida case.

4 So, yes, we were intending to test the
5 pleadings in those two cases.

6 THE COURT: Do you have sort of a timeline? I
7 think in the joint status report one of the things you
8 all said you would raise with me is a briefing schedule
9 of some kind.

10 MR. DALTON: Yes. To be quite honest, that
11 one hasn't got on my agenda yet but I can certainly talk
12 with my co-counsel, co-defense counsel and try to figure
13 out to map out strategies and timeframe and perhaps that
14 might be something when we put in the joint discovery
15 plan for the Rule 16 conference, maybe that would be
16 something we propose in that.

17 THE COURT: Yes.

18 MR. DALTON: I throw that out to the Court and
19 Ms. Segui.

20 THE COURT: Ms. Segui, any reaction to that?

21 MS. SEGUI: That's fine. We had previously
22 spoken to Mr. Dalton about just briefing schedules and
23 the other and had proposed 30 days for a response and 15
24 days for a reply. So we would just try to keep those
25 timeframes in mind again but other than that, that makes

1 sense to me.

2 MR. DALTON: If those timeframes are good with
3 the Court, they are probably good with me. I just have
4 to figure out when that first date is going to fall.

5 THE COURT: When you write the first brief,
6 yes, that's the tricky part. Okay. That's fine with
7 me.

8 Let me think about it a little bit. This
9 might segue into what I wanted to talk about with
10 respect to the schedule kind of going forward, including
11 the Rule 16 conference and discovery.

12 To me I usually won't stay discovery in light
13 of a pending motion to dismiss. I don't think it makes
14 sense in this case to do so. I think it probably makes
15 sense to start you all on sort of a path to discovery.

16 You already started it. Even though it's an
17 MDL and sort of a bigger class action, I got to think
18 for purposes of getting to the nub of the key discovery
19 and mediation purposes, it's not going to be so
20 voluminous I would hope or I would think that there is a
21 huge efficiency gained by pushing off all discovery
22 until resolution of motions to dismiss.

23 Sort of coming in my plan was we do one of
24 these conferences relatively quickly. In advance of
25 that, you all could provide a discovery plan which would

1 scope out also the motion to dismiss, briefing schedule,
2 and then we can sort of start you on discovery, start
3 you with the special master, and then I would take up
4 the motions to dismiss as quickly as I can so that there
5 would be some -- in the event I dismiss the whole case,
6 obviously there would be some efficiency gained.

7 I was a little concerned pushing discovery way
8 off to resolve some of these motions, including if they
9 were potentially partial motions that wouldn't entirely
10 dispose of all the claims. I don't know if that's the
11 case or not but I'm willing to talk about that.

12 Mr. Dalton, any reaction to that?

13 MR. DALTON: Well, the motions themselves
14 would be addressed entirely. It would be entirely
15 dispositive. That would be our intent to try to make
16 them entirely dispositive.

17 I'm going to be the rational lawyer to say,
18 Judge, I understand your position. Obviously my client
19 would certainly prefer to have decisions made before
20 engaging in discovery but at the same time, I understand
21 the Court's desire to get the case moving as well.

22 THE COURT: I'm open to suggestions from both
23 sides, too, on it.

24 Even from the plaintiffs' perspective, you
25 don't want to waste a lot of time and energy to find

1 dismissing a whole case.

2 Another option is taking some kind of more
3 narrow upfront discovery before we sort of open it up to
4 broader discovery and that might be a little bit more
5 proportional. There's some other options there as well.

6 Ms. Segui, I don't know if you have a take on
7 it.

8 MS. SEGUI: From our perspective, this case is
9 over a year old and we really want to get moving.

10 Something I would love to re-explore with
11 Mr. Dalton and his colleagues is doing a discovery
12 coordination plan so we're discussing serving a master
13 set of discovery, discussing certain limitations and
14 things like that so that we're not duplicating efforts
15 there.

16 So I would like to get that kind of thing in
17 place. We would certainly love to start sending
18 subpoenas off to authorized retailers and places like
19 that.

20 My initial reaction to doing a more narrowed
21 approach on the front end is that I have the
22 Blackbod (phonetic) MDL that I'm co-leading right now
23 which is in some intense phased discovery and it's
24 causing some issues about what is included. It's the
25 typical kind of like almost a similar bifurcation kind

1 of argument where you end up getting into trouble with
2 what should be included and what shouldn't be included.
3 I think sometimes that can create some issues but, yes,
4 that's just sort of my reaction to that.

5 I would love to just get the discovery plan in
6 place and let's start moving. The optimist and the
7 plaintiffs' attorney believes the case will not be
8 dismissed in its entirety, so that's where we are coming
9 from there.

10 THE COURT: Okay. I can sort of tend to agree
11 with you with respect to formal bifurcation or phasing.
12 I loved that as a lawyer and I loved it as a judge. It
13 creates so many headaches and usually the lawyers come
14 back jointly later saying we don't want the bifurcation
15 anymore because of all the headaches it causes.

16 Maybe the thing to talk about and when you
17 sort of work through a proposed discovery plan isn't so
18 much a bifurcation but this just goes to
19 proportionality, and I think logically it is going to
20 make sense to try to maybe prioritize some of the less
21 burdensome and less costly discovery like the subpoenas.
22 I think you have to get those out, otherwise -- both
23 sides I think would need to get those out to get your
24 arms around class size, right? I presume All-Clad sells
25 direct but primarily also through retailers and so it

1 seems like you'll need to get records of purchases and
2 that sort of thing even to be able to intelligently
3 assess exposure and settlement value.

4 So things like subpoenas and documents that
5 would be covered by initial disclosures. I presume you
6 both have experts, maybe All-Clad has somebody internal,
7 that is looking at the products and working up the
8 products. That sort of thing should probably be front
9 loaded as well, maybe pushing off some of the
10 depositions a little bit in the schedule until I can get
11 through, you all can get through the briefing and the
12 motion to dismiss and I can make a decision on it.

13 Does that sort of make sense at a high
14 conceptual level?

15 MS. SEGUI: Yes, that makes perfect sense to
16 me. Actually, I was thinking prioritization and then
17 you said it. I was happy that you said that. That
18 makes total sense.

19 That is also something Mr. Dalton and our
20 colleagues can discuss and probably reach an agreement
21 about what is the priority and those necessary items and
22 also those things might help us push towards potentially
23 mediating again.

24 THE COURT: Okay. Mr. Dalton, any views on
25 this?

1 MR. DALTON: From a very high level
2 perspective, I think that's fine like you discussed, to
3 get into the details obviously.

4 THE COURT: What I think I might do then in
5 terms of next steps is after this conference have you
6 all sort of meet and confer, maybe come up with like a
7 discovery plan that would also include a Rule 12
8 briefing schedule component to it and then in light of
9 kind of how the briefing schedule is structured, maybe
10 you can propose some sort of a discovery horizon. It
11 wouldn't be formal phases but maybe kind of tentative
12 plans as to what over the next three months we sort of
13 plan on doing X and then the following three months Y.

14 I wouldn't necessarily hold you all to that if
15 there is a need to do a critical deposition earlier than
16 whatever, phase two or three, but at least everyone is
17 on the same page as to how the case can proceed in an
18 orderly way and be mindful of cost.

19 I think it probably makes sense to sit down
20 and confer and kind of come up with that plan and then
21 have a sit down or a virtual sit down with Carole Katz
22 to get her on the same page to the extent some of that
23 overlaps with production of ESI and the ESI order and
24 when you work through that, submit a proposal to me.

25 What we can do is either do another Rule 16

1 conference at that point in time or if you want to add
2 this to whatever submission you make, that you don't
3 think it's necessary and sort of clear from that, I'm
4 fine if I understand just authorizing it and then
5 allowing you to go sort of off to the races on that.

6 Any question on that plan, Ms. Segui?

7 MS. SEGUI: No. That sounds great.

8 THE COURT: Mr. Dalton?

9 MR. DALTON: That's fully clear, yep.

10 THE COURT: Okay. In terms of mediation, I do
11 think it makes sense to go through another mediation,
12 probably with another mediator and it may be something
13 that -- I think it should be earlier rather than later
14 but maybe not too early here.

15 I don't know how your discussions were before
16 but maybe it was more back of the envelope in terms of
17 sort of class size and that sort of thing but it might
18 make sense to take some of that initial discovery, maybe
19 get into about three months or so to get a better sense
20 and handle on class size and exposure and that sort of
21 thing, then revisit mediation.

22 I'm not opposed if you think you are ready to
23 go sooner to that option as well, but I don't know from
24 your prior experience whether you all had enough
25 information. Maybe you didn't even get to that point.

1 Maybe you were just talking structures and not numbers
2 but I'm open to hearing your thoughts or you think you
3 are prepared -- I know you did some exchange of
4 information before. If you're prepared right away to go
5 to mediation or you think it might make sense to do some
6 additional discovery and find a date a few months from
7 now?

8 MS. SEGUI: We did get a good bit of
9 information through our prior exchange. There is
10 probably some stuff that would be good to update and
11 maybe hash through on the back end with some additional
12 discussions with Mr. Dalton and his team ahead of time
13 and also continue to proceed with litigation and
14 discovery on a dual track.

15 I do know that because no one is still really
16 traveling all that much for mediations, it's actually
17 harder to get dates these days because everybody is able
18 to get on Zoom. That's great for traveling purposes but
19 it's harder for mediators.

20 Maybe if we can reach an agreement on a
21 different mediator and try like a September-October kind
22 of timeline and that way we can continue to get
23 discovery done, including updating where we were last
24 fall, I think that's a good plan.

25 THE COURT: Okay. Mr. Dalton, any reaction to

1 that?

2 MR. DALTON: I think it's a good idea to try
3 to see if we can get this resolved one way or another.
4 I'm happy to talk to our team about getting some
5 additional names of any potential other mediators. It's
6 always nice to add another mediator to our list in
7 pocket.

8 THE COURT: Absolutely. Sounds good.

9 Why don't we do this. As part of the order
10 after this hearing, I'll have you do sort of the
11 discovery plan, set up a meeting with Carole Katz and
12 then whatever proposal you provide to me, proposed
13 order, kind of get your ducks in a row, sort of talk
14 about a mediator, maybe schedule a date and put it in
15 there so it's all scheduled and on track.

16 I will say this. At least the mediators here,
17 many of them are doing Zoom mediations and actually have
18 vowed never to go back to doing them in person.

19 I was playing golf with a mediator the other
20 day and he said he is never going to do another
21 in-person mediation. He doesn't have to travel anymore.
22 Then for client reps, it's great. They don't have to
23 travel and it actually makes the logistics a lot easier.

24 From my settlement conferences that I have
25 done, I found them to be pretty effective. I have heard

1 sort of some folks having negative experiences, so it
2 may depend on the case or the mediator, but hopefully,
3 they may make it a little bit easier to coordinate,
4 especially since everybody is sort of in different
5 locations and depending on the mediator, that person
6 might be in a different location as well.

7 I should note, too, under our local rules, you
8 are not tied to using a mediator that is on our local
9 list. You certainly can. I'm not sure any come to
10 mind. I will have to give it some thought. It might be
11 something you talk to Carole Katz about, who is one of
12 our more prominent mediators here who she might know
13 somebody or recommend somebody who is a real products
14 mediator. I know I have used and referred cases to --
15 you all might, especially Mr. Dalton, you might have
16 used him out sort of your way, Jed Melnick. He's a
17 JAMS. I think he is out of Philadelphia.

18 MR. DALTON: Yes, very familiar name.

19 THE COURT: I like him. I think he has done
20 some products cases, a lot of security cases, but I
21 always liked him as a lawyer and as a judge because he
22 is sort of creative and smart. I drop his name. Don't
23 feel pressure to use him. I don't know of the product
24 experience, you might need somebody with more products,
25 who would understand that as well.

1 So the last thing I wanted to note on my list
2 and I'll certainly open it up for anything anyone else
3 wants to raise or anyone thinks I have forgotten, is
4 just sort of my general practices and procedures.

5 I think you saw from my initial order that
6 obviously we put a premium on collegiality. I don't
7 think that is going to be an issue. I can already sense
8 you have all worked together very well.

9 We have a special master in place here in this
10 case where I think she is a real problem solver so if
11 any discovery disputes come up, you might want to see if
12 she will engage in more of an informal resolution
13 process as opposed to a lot of motions practices. I
14 think she will be a good asset to all of you.

15 That's some of sort of the quirks in terms of
16 class actions. To the extent this case, if it's helpful
17 to tell you right upfront thinking about it the whole
18 time, so to the extent this case gets to a class-wide
19 settlement stage, I like to really scrutinize the
20 fairness of the class settlement at the preliminary
21 approval stage as opposed to the final fairness stage.
22 I think at that point the ship has sailed a little bit
23 and there are a lot of sunk costs if you sort of undue a
24 settlement.

25 So give it some thought when you do your

1 preliminary approval papers and I might want to even
2 hold a more formal hearing such that in my view, the
3 fairness hearing, that is more kind of like a rubber
4 stamp because I will hopefully have really vetted any
5 class-wide settlement at the preliminary approval
6 hearing and maybe I'm just looking at things like
7 opt-outs and claims rates and that sort of thing at the
8 final stage.

9 The other thing, too, to think about as you
10 try to settle the case, to the extent you get to that
11 point and mediate the case, I also really try to
12 scrutinize things like attorney fees and how attorney
13 fees are allocated. Obviously that's an important
14 consideration. So give it a thought as to how you want
15 to mediate the case and how you engage in settlement
16 discussions.

17 So, for example, to me like the cleanest way
18 to do it, and I know it's not practical oftentimes,
19 especially from the defense side, is to sort of agree in
20 principal on a settlement amount and defer fees for a
21 separate settlement discussion and negotiation such that
22 there is no sort of ethical issues involved.

23 I note that what you could even do is
24 structure a settlement such that the fees component --
25 you'll agree to the settlement, agree in good faith to

1 negotiate the fees separately and if there is a dispute
2 on that, agree to just send it to the Court.

3 I'm not necessarily advocating that but that's
4 a good, clean way where you won't get into some more
5 ethical land mines.

6 Regardless of that, however you do that, keep
7 that in mind that I will pay close attention to that.

8 The other thing both with respect to motions
9 for class certification as well as approval of a
10 class-wide settlement, I really look closely to
11 involvement of the named plaintiffs. I think the named
12 plaintiffs obviously are important for adequacy purposes
13 but even more so for settlement purposes, I would expect
14 that there would be as part of any kind of settlement or
15 request for incentive awards or incentive fees. I would
16 probably want to talk to the named plaintiffs before I
17 authorize -- talk to them in the context of a hearing,
18 of course, before I authorize incentive awards to make
19 sure that they're sort of on top of really managing the
20 case as I believe a named plaintiff should do so.

21 That means in my mind, at least, more of an
22 active role. It doesn't necessarily mean in the weeds
23 but I want somebody that knows what is going on, is in
24 frequent communication with counsel and is at major
25 court appearances, if able, like a remote appearance or

1 even by phone if travel is an issue.

2 So I will look at things like that before I
3 authorize or approve any kind of incentive award. I may
4 look at things like that with respect to adequacy of the
5 class representative.

6 I want to throw those out there so you all
7 know now from day one what is important to me and
8 hopefully can take that into account as you sort of
9 progress in terms of litigating or trying to mediate
10 this case.

11 That's everything I think on my list. Are
12 there any questions or anything that I have missed or we
13 should discuss? Ms. Segui, from the plaintiffs'
14 perspective, anything?

15 MS. SEGUI: No, Your Honor.

16 THE COURT: Mr. Dalton, anything?

17 MR. DALTON: I think that's all of it, Judge,
18 yes.

19 THE COURT: Great. Thank you. I'll get an
20 order out kind of memorializing everything we talked
21 about next steps and we'll go from there.

22 Since everybody is sort of remote, to the
23 extent we have conferences, I'm fine doing these by
24 Zoom. I would like to see some folks in person one day,
25 so we might have a couple of these in person but if

1 there are issues with travel or anything, let me know
2 and we can certainly have some minor conferences as Zoom
3 conferences.

4 With that, I appreciate everybody here today.
5 Take care and have a good day.

6 MS. SEGUI: Thank you, Your Honor.

7 MR. DALTON: Thanks, counsel.

8 (Whereupon, the above hearing concluded at
9 3:00 p.m.)

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11

12 I hereby certify by my original signature
13 herein, that the foregoing is a correct transcript, to
14 the best of my ability, from the record of proceedings
15 in the above-entitled matter.

16

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18 S/ Karen M. Earley

19 Karen M. Earley

20 Certified Realtime Reporter

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